

CENTER FOR DISABILITY ACCESS  
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Attorney for Defendants

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**Scott Johnson,**

Plaintiff,

v.

**John M. Morgin**, in individual and  
representative capacity as trustee of  
The Morgin 2009 Revocable Trust  
dated March 12, 2009;  
**Asian Pacific Industries, Inc.**, a  
Washington Corporation; and Does  
1-10,

Defendants

Case No. 5:18-cv-07253-SVK

**Joint Case Management  
Statement**

Date: November 5, 2019  
Time: 9:30 a.m.

Honorable Judge Susan van Keulen

The parties jointly submit this Joint Case Management Statement pursuant to the Standing Order for All Judges of the Northern District of California dated November 1, 2014 and Civil Local Rule 16-9.

1           **1.     Jurisdiction & Service**

2           This Court has subject matter jurisdiction over this action pursuant  
3 to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the  
4 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

5           This court has supplemental jurisdiction over the claims brought  
6 under the Unruh Act pursuant to 28 U.S.C. § 1367(a) as the claims arise  
7 from the same incident.

8           Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
9 founded on the fact that the real property which is the subject of this action  
10 is located in this district and that Plaintiff's cause of action arose in this  
11 district.

12           The complaint has been duly served on Defendant John M. Morgin  
13 on or about December 31, 2018 and on Defendant Asian Pacific  
14 Industries, Inc. on or about December 28, 2018.

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16           **2.     Facts:**

17           Plaintiff: Scott Johnson is a level C-5 quadriplegic. He cannot walk  
18 and also has significant manual dexterity impairments. He uses a  
19 wheelchair for mobility and has a specially equipped van. Defendant John  
20 M. Morgin, in individual and representative capacity as trustee of The  
21 Morgin 2009 Revocable Trust dated March 12, 2009, owns the real  
22 property located at or about 4040 Stevens Creek, San Jose, California.  
23 Defendant Asian Pacific Industries, Inc. owns Jaguar Stevens Creek  
24 ("Jaguar") located at or about 4040 Stevens Creek, San Jose, California.

25           Even though there was a parking space marked and reserved for  
26 persons with disabilities in the parking lot serving Jaguar during Plaintiff's  
27 visits, the parking stall and access aisle are not level with each other. The  
28 parking stall and access aisle have cross slopes and running slopes greater

1 than 2.1%. In addition to not having a level parking space, the parking stall  
2 did not have the required signage bearing the International Symbol of  
3 Accessibility logo, "Minimum Fine \$250" and tow-away signage. The  
4 transaction counter at Jaguar was about 42 inches in height. There was no  
5 lowered, 36 inch portion of the transaction counter at Jaguar for use by  
6 persons in wheelchairs to conduct transactions. The service counter  
7 located in the parts department was about 42 inches in height. There was  
8 no lowered, 36 inch portion of the service counter for use by persons in  
9 wheelchairs. The ramps that ran up to the entrances did not have a level  
10 landing on the day of plaintiff's visits. The ramps terminated at the door  
11 and there were no level landings whatsoever. Additionally, the ramps had  
12 slopes of as much as 10%. The entrance door hardware at Jaguar had a  
13 panel style handle that required tight grasping to operate during plaintiff's  
14 visits.

15 Defendant's failure to provide for level parking, level landing, lack  
16 of accessible parking space, transaction counter, service counter and door  
17 hardware at the Jaguar is discriminatory against the plaintiff; and  
18 therefore, violates the plaintiff's rights under the American with  
19 Disabilities Act and the Unruh Civil Rights Act. Plaintiff seeks injunctive  
20 relief and the statutory minimum damage award.

21 Defendant: disputes these allegations.  
22

### 23 **3. Legal Issues**

24 The disputed legal issues are: (1) Whether the defendant's property  
25 meets the minimum standards of the ADA; state disability laws and other  
26 codes; (2) whether the defendants are responsible under the law to remove  
27 barriers; (3) whether the barriers are readily achievable to remove; (4)  
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1 whether the plaintiff has standing to seek either damages or injunctive  
2 relief; and (5) the nature and extent of damages, if any.

3  
4 **4. Motions**

5 Plaintiff: anticipates filing a motion for partial summary judgment  
6 on the issue of duty and liability under the ADA and the Unruh Civil Rights  
7 Act. This will happen after the necessary depositions are taken in this case.

8 Defendant: None.

9  
10 **5. Amendment of Pleadings**

11 Plaintiff: Plaintiff intends to conduct an expert led site inspection to  
12 identify each barrier that would affect his type of disability and, then,  
13 amend the complaint to ensure that the ADA claim reflects his intention to  
14 have all unlawful barrier removed or remediated. This is the two-step  
15 process permitted and required by *Doran v. 7-Eleven Inc.*, (9th Cir. 2008)  
16 524 F.3d 1034 and *Chapman v. Pier 1 Imports (US) Inc.*, 631 F.3d 939 (9th  
17 Cir. 2011).

18 Defendant: do not anticipate amendment of pleadings.

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21 **6. Evidence Preservation**

22 The Parties agree to make efforts to preserve all discoverable  
23 information, regardless of the format in which it is kept (email, database,  
24 paper file, etc.).

25 The parties are unaware of any issues in this regard at this time.

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1       **7. Disclosure**

2               The Parties do not seek any changes to the form or requirements for  
3 initial disclosures. The parties have exchanged initial disclosures.

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5       **8. Rule 26 Discovery Plan**

6               1. Discovery Subjects

7               Plaintiff intends to seek discovery related to: (1) the ownership  
8 and operation of the business; (2) the lack of level parking, level  
9 landing, lack of accessible parking space, transaction counter,  
10 service counter and door hardware at the Jaguar; (3) changes or  
11 modifications to the property; (4) the feasibility of providing access  
12 to persons with disabilities. Plaintiff intends to propound a set of  
13 Interrogatories, Requests for Admission and Requests for  
14 Production of Documents; to take the deposition of Defendant and  
15 to conduct an expert site inspection.

16               Defendant: None.

17  
18               The Parties do not propose to conduct discovery in phases. The  
19 parties consent to receive by e-mail all discovery responses that are  
20 capable to be received via electronic means and propose a discovery  
21 cut-off date of October 12, 2020.

22  
23               2. Changes in Limitations on Discovery

24               Plaintiff: Plaintiff requests that rule FRCP 33(a)(1) limits be  
25 increased to 45 for both parties. Plaintiff otherwise requests no  
26 deviation from the Federal and Local Rules.

27               Defendant: None.  
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1       **9.     Class Actions**

2             N/A.

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4       **10.   Related Cases**

5             The Parties are unaware of any related cases.

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7       **11.   Relief**

8             Plaintiff: claims injunctive relief, attorney fees and damages under  
9             the Unruh Civil Rights Act, which provides for actual damages and a  
10            statutory minimum of \$4,000.

11            Defendant: no dispute.

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14       **12.   Settlement and ADR**

15            Joint Site Inspection was conducted on March 27, 2019 and the  
16            Notice of Need for Mediation was filed on May 8, 2019 as required by  
17            General Order 56 and this Court's Scheduling Order. The matter was  
18            provisionally settled on July 24, 2019. The parties submitted a notice of  
19            settlement to this Court on July 25, 2019. However, despite multiple  
20            attempts, and diligent action by the plaintiff, settlement has not been  
21            consummated and plaintiff moved to have this case reopened.

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23       **13.   Consent to Magistrate Judge for All Purposes**

24            The parties consent to have a Magistrate Judge preside over this  
25            case.

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27        //  
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1       **14. Other References**

2               None

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4       **15. Narrowing of issues**

5               None

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7       **16. Expedited Trial Procedure**

8               The parties do not believe that this case is suitable for an expedited  
9       schedule.

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11       **17. Scheduling**

12               The parties propose:

13               The date for Disclosures of Expert Witness as August 31, 2020

14               Discovery Cut-Off of October 12, 2020

15               Law and Motion Cut-Off of November 9, 2020

16               Pre-trial Conference date of December 21, 2020

17               Trial date of January 5, 2021

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20       **18. Trial**

21               Plaintiff: has requested a Court trial and anticipates a 2-3 day trial.

22               Defendant: has requested jury trial.

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24       **19. Disclosure of Non-Party Interested Entities or Person**

25               Plaintiff: There are no interested parties other than the Plaintiff.

26               Defendant: There are no interested parties other than the  
27       Defendant.  
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**20. Professional Conduct**

Counsel have reviewed the Guidelines for Professional Conduct for the Northern District of California.

**21. Other Matters**

None

Dated: October 29, 2019

CENTER FOR DISABILITY ACCESS

By: /s/Amanda Lockhart Seabock  
Amanda Lockhart Seabock  
Attorney for Plaintiff

Dated: October 29, 2019

MICHAEL WELCH + ASSOCIATES

By: /s/Michael D. Welch  
Michael D. Welch  
Attorney for Defendant



**SIGNATURE ATTESTATION**

I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in this document's content and have authorized the filing of this document with the use of their electronic signature.

Dated: October 29, 2019

CENTER FOR DISABILITY ACCESS

By: /s/Amanda Lockhart Seabock  
Amanda Lockhart Seabock  
Attorney for Plaintiff

**EXHIBIT A**  
**PROPOSED SCHEDULE OF PRETRIAL & TRIAL DATES**

<b>Matter</b>	<b>Weeks Before Trial</b>	<b>Parties Request</b>
Last Day for Hearing on Motion to Add Parties and Amend Pleadings <b>(Monday at 10:00 a.m.)</b>	25	7/13/2020
Non-Expert Discovery Cut-Off	15	9/21/2020
Expert Discovery Cut-Off	12	10/12/2020
Last Day to Conduct Settlement Proceedings	10	10/26/2020
Last Day for Law and Motion Hearings	8	11/9/2020
Final Pretrial Conference <b>(Monday at 1:30 p.m.)</b>	2	12/21/2020
Last Day for Filing Proposed Findings of Facts and Conclusions of Law (if court trial)	1	12/28/2020
Exhibit Conference <b>(Friday at 3:00 p.m.)</b>	Friday before Trial	1/1/2021
Trial <b>(Tuesday at 9:00 a.m.)</b>		1/5/2021